

[Floor Situation](#) | [Summary](#) | [Background](#) | [Cost](#) | [Staff Contact](#)

H.R. 1927, Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2015

FLOOR SITUATION

On Friday, January 8, 2016, the House will consider [H.R. 1927](#), *the Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2015, as amended*, under a [structured rule](#). H.R. 1927 was introduced on April 22, 2015 by Rep. Bob Goodlatte (R-VA) and was referred to the Committee on the Judiciary. The Judiciary Committee ordered the bill reported, as amended, by a vote of 15 to 10 on June 24, 2015. The Rules Committee print to H.R. 1927 consists of the text of H.R. 1927, as ordered reported by the Committee on the Judiciary, and H.R. 526, *the Furthering Asbestos Claim Transparency Act of 2015*, which the Judiciary Committee ordered reported by a vote of 19 to 9 on May 14, 2015.

SUMMARY

H.R. 1927 prohibits a federal court from certifying any proposed class seeking monetary relief for personal injury or economic loss unless the party seeking the class action shows that each proposed class member suffered the same type and scope of injury as the named class representative or representatives. The bill requires a court, in issuing a class certification order for any class subject to the bill's requirements, to also certify that those requirements have been met based on a rigorous analysis of the evidence presented.

H.R. 1927 also includes the text of H.R. 526, which amends Section 524(g) of the Bankruptcy Code to require asbestos trusts to file quarterly reports with the bankruptcy court, not later than 60 days after the end of every quarter, detailing claimants' names, claimants' exposure history, and the basis for any payments made to claimants.

BACKGROUND

Fairness in Class Action Litigation

A class action is “a type of lawsuit filed by one or more individuals on behalf of a larger group of people.”¹ Such lawsuits may enable large groups of individuals who are injured in the same manner by the same defendants to hold such entities accountable and make it economically feasible for plaintiffs to seek justice for smaller, but consequential injuries. Class actions also may promote judicial efficiency by allowing courts to “deal with what would otherwise be a large number of small and repetitive cases involving common legal and factual questions.”²

Federal class action rules “currently require that a class share questions of law and fact in common, and that the claims and defenses of the representative parties are ‘typical’ of those of the class.”³ Despite these standards, “some courts have allowed classes to be certified absent a showing that all the members of the class actually share a common injury of the same type, and of comparable scope.”⁴ Such class actions “undermine the proper administration of justice and hurt the U.S. economy by lumping uninjured people and injured into the same classes, greatly inflating the class size, and unduly pressuring companies to settle, at the expense of consumers who are forced to pay higher prices in order to offset the cost of litigation to U.S. companies.”⁵

H.R. 1927 is designed to ensure class actions involve similarly injured parties and preserve their ability to receive appropriate recoveries while allowing non-comparably injured parties to join separate class actions. According to Chairman Goodlatte, the bill would “achieve a very important reform: clustering actually injured or similarly injured class members in their own class. People who are injured deserve to have their own class actions, in which they present their uniquely powerful cases, and get the recoveries they deserve. Under this legislation, uninjured or non-comparably injured people can still join class actions, but they must do so separately, without taking away from the potential recovery of actually or comparably injured people.”⁶

Furthering Asbestos Claim Transparency

Asbestos is a commercial name given to six minerals that were widely used in industrial products in the United States throughout the 20th Century. Since asbestos is strong, durable, and fire-retardant, it was used as insulation, weaved into textiles, and lined automobile brakes. The consumption of asbestos in the United States “peaked in 1973 and then dropped dramatically over the next three decades.”⁷ Despite its usefulness in industrial and residential products, “it was discerned that asbestos fibers cause serious diseases when inhaled. Inhalation of asbestos fibers has been linked to a number of diseases, including mesothelioma, lung cancer, asbestosis, and pleural abnormalities.”⁸

¹ See [House Report 114-328](#) at 15.

² Id.

³ Id. at 2.

⁴ Id.

⁵ Id. at 2 and 3.

⁶ See Goodlatte Statement—“[Hearing: H.R. 1927, the “Fairness in Class Action Litigation Act of 2015,”](#) April 29, 2015.

⁷ See [House Report 114-352](#) at 2.

⁸ Id.

Asbestos litigation “is the longest-running mass tort litigation in the United States.”⁹ The first successful asbestos liability lawsuit was upheld in 1973, causing asbestos litigation to balloon. “During the 1990’s, the number of asbestos cases pending nationwide doubled from 100,000 to more than 200,000. By 2002, approximately 730,000 claims had been filed, with more than 100,000 claims filed in 2003 alone—the most in a single year.”¹⁰

The growth in asbestos litigation in recent years “is largely attributable to the significant increase of claimants with nonmalignant injuries, including those with little or no current functional impairment.”¹¹ By the early 2000’s, “the overwhelming majority of claims—up to 90 percent—were filed on behalf of plaintiffs who were completely asymptomatic. These claimants may have had some marker of exposure, such as changes in the pleural membrane of their lungs, but are not now and never will be afflicted by disease. Conversely, when asbestos litigation first arose in the 1960s, most claimants were workers suffering from grave and crippling maladies.”¹²

Asbestos litigation “has driven nearly 100 companies into bankruptcy, with more than half of such companies filing since the beginning of the year 2000.”¹³ The cost of these bankruptcies “is largely immeasurable, but has been estimated to cost the American economy approximately 60,000 jobs and between \$1.4 and \$3.0 billion.”¹⁴ Consequently, in 1994, Congress amended the bankruptcy code to include a provision (11 U.S.C. Section 524(g)) “to allow for the resolution of asbestos liability claims against a debtor through a trust-based system.”¹⁵ Under this section, a debtor “is permitted to create, in its chapter 11 plan, a trust that is to be the exclusive source of post-confirmation compensation for the debtor’s asbestos liability. If the trust meets certain prescribed requirements, the debtor, after its successful reorganization, is granted a channeling injunction that prohibits any asbestos plaintiff from suing the reorganized debtor for asbestos liability.”¹⁶

Section 524(g) is intended to ensure that “asbestos claimants receive a trust funded in an amount and administered in a manner that is satisfactory to the presiding bankruptcy court and a majority of the debtor’s known asbestos claimants in exchange for the debtor’s ability to gain certainty regarding its asbestos liability exposure and a shield against future claims in order to allow the debtor to continue its business operations.”¹⁷ Currently, there are “60 asbestos trusts with current and anticipated assets totaling between \$30 billion and \$37 billion. The asbestos trusts review and pay damages on account of millions of claims a year; between 2007 and 2008, selected asbestos trusts satisfied over four million claims.”¹⁸

Bankruptcy law requires debtors to file periodic disclosures that, among other things, detail the financial health of the asbestos liability trust. These disclosure requirements, however, do not require debtors to identify claimants seeking compensation, the nature of their injuries, and the basis for any payments made by the trusts. In fact, trust documents governing the operation of the asbestos trusts “often include restrictions on sharing trust data, facilitating a lack of transparency in the trust system.”¹⁹ The lack of transparency has led to fraud, such as duplicative and conflicting claims being

⁹ Id. at 3.

¹⁰ Id. at 4.

¹¹ Id.

¹² Id.

¹³ Id. at 4 and 5.

¹⁴ Id. at 5.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 11.

made against various bankruptcy trusts as well as in the state court system. In fact, the Government Accountability Office and the RAND Corporation have both concluded that “asbestos bankruptcy trusts are unlikely to identify and decline payment of improper claims, including claims that are supported by altered work histories or allege inconsistent exposure patterns.”²⁰ The asbestos provisions of H.R. 1927 are designed to address these issues by requiring greater transparency for asbestos trusts, preserving funds for valid claimants. According to the sponsor of those provisions, “when attorneys and their clients bring false or exaggerated claims to trusts, they take assets from deserving victims. The FACT Act will discourage this kind of abuse by shining light on the trust system, as sunlight is often the best disinfectant.”²¹

On November 13, 2013, the House passed [H.R. 982](#), *the Furthering Asbestos Claim Transparency (FACT) Act of 2013*, by a vote of [221 to 199](#). The bill included provisions identical to the asbestos provisions of H.R. 1927. The Senate did not consider H.R. 982 during the 113th Congress.

COST

The Congressional Budget Office (CBO) [estimates](#) that the additional costs to federal courts under H.R. 1927, as ordered reported by the Committee on the Judiciary, would not be significant. Enacting H.R. 1927 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO [estimates](#) that H.R. 526, as ordered reported by the Judiciary Committee, would have no significant effect on the federal budget.

AMENDMENTS

1. Rep. Steve Cohen (D-TN)—The [amendment](#) makes an exception from the bill’s required showings for class certification for claims for monetary relief against the perpetrator of a terrorist attack by victims of such attack.
2. Rep. Steve Cohen (D-TN)—The [amendment](#) makes an exception from the bill’s required showings for class certification for claims for monetary relief arising from a foreign-made product.
3. Rep. John Conyers (D-MI)—The [amendment](#) provides an exception from the bill’s required showings for class certification for claims for monetary relief pursuant to Title VII of the Civil Rights Act of 1964.
4. Rep. Ted Deutch (D-FL)—The [amendment](#) creates an exception for claims brought by a gun owner seeking monetary relief involving the defective design or manufacturing of a firearm.
5. Rep. Gwen Moore (D-WI)—The [amendment](#) exempts causes of action arising under the Fair Housing Act or the Equal Credit Opportunity Act from the bill’s requirements.
6. Rep. Gwen Moore (D-WI)—The [amendment](#) exempts causes of action arising from a pay equity claim under Title VII of the Civil Rights Act or the Equal Pay Act from the requirements of the bill.

²⁰ Id.

²¹ See Press Release—“[House Judiciary Committee Approves Rep. Farenthold’s Fact Act](#),” May 21, 2013.

7. Rep. Maxine Waters (D-CA)—The [amendment](#) creates an exception for claims brought by students, service members and veterans seeking relief from institutions of higher education that have engaged in fraudulent activities and unfair practices.
8. Rep. Hank Johnson (D-GA)—The [amendment](#) strikes the "scope" and "economic loss" language from the bill.
9. Rep. Sheila Jackson Lee (D-TX)—The [amendment](#) provides litigants in a pending class action access to information held in a trust that is directly related to a plaintiff's claim for asbestos exposure.
10. Rep. Jerrold Nadler (D-NY)—The [amendment](#) replaces the bill's requirement for asbestos trusts to disclose detailed personal information with aggregate reporting of demands received and payments made by the trusts.

STAFF CONTACT

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.